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March 8, 2004

Thomas M. Dorman, Executive Director  
Kentucky Public Service Commission  
P.O. Box 615  
211 Sower Boulevard  
Frankfort, Kentucky 40602-0615

**RECEIVED**

MAR 08 2004

PUBLIC SERVICE  
COMMISSION

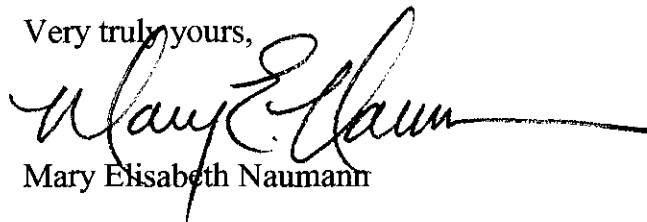
Re: PSC Case No. 2003-00400

Dear Mr. Dorman:

Enclosed please find the Request for Informal Conference and to Suspend Scheduling Order for the above referenced case, along with eleven copies. Please file this and return one file stamped copy to us.

If you should have any questions regarding this, please call me.

Very truly yours,



Mary Elisabeth Naumann

Enclosures

cc: Saeid Shafizadeh, Complainant  
BellSouth Mobility, LLC

MEN/kmj  
5864/321/354508

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

**RECEIVED**

In the matter of:

MAR 08 2004

SAEID SHAFIZADEH

PUBLIC SERVICE  
COMMISSION

COMPLAINANT

CASE NO.: 2003-00400

v.

CINGULAR WIRELESS-KENTUCKY

DEFENDANT

**REQUEST FOR INFORMAL CONFERENCE AND**  
**TO SUSPEND SCHEDULING ORDER**

Pursuant to 807 KAR 5:001 § 4(4), BellSouth Mobility, LLC, d/b/a Cingular Wireless (“Cingular”), requests an informal conference with the Public Service Commission (“Commission”) staff in an effort to resolve this matter prior to the scheduled hearing. Cingular believes that a formal hearing is not necessary because no factual questions exist on issues that are within the Commission’s jurisdiction. Because Cingular believes that this matter can be resolved in an informal conference, Cingular further requests that the procedural dates and deadlines set forth in the Commission’s February 24, 2004 Scheduling Order be suspended pending resolution of these issues. In support of its request, Cingular states as follows:

1. The Complainant filed the Complaint initiating this matter with the Commission on October 22, 2003. The Complaint contains two primary allegations against Cingular: (1) That Cingular wrongfully disrupted the Complainant’s wireless telephone

service after failing to credit the Complainant's account for his payment for services billed on June 18, 2003 and did not rectify the situation after receiving notice of payment and (2) That Cingular utilized the Complainant's social security number in violation of federal law.

2. Cingular attempted to resolve this matter with the Complainant, but those efforts were unsuccessful. Cingular, therefore, filed its Answer on November 22, 2003. In its Answer, Cingular admitted that

- (a) the Complainant was its customer,
- (b) the Complainant had a good payment history,
- (c) the Complainant's payment of his June 18, 2003 bill was inadvertently applied to the wrong account, creating a situation in which Cingular mistakenly believed that Complainant had not paid his bill,
- (d) as a result of Cingular's mistaken belief that Complainant had not paid his bill, Complainant's wireless service was suspended or disconnected on certain dates, and
- (e) Complainant paid the June 18, 2003 bill at issue.

3. As demonstrated in the previous paragraph, Cingular admits the material facts concerning the dispute of the Complainant's payment of his June 18, 2003 bill. The only disputes between the parties pertain to the legal consequences of those facts and to Complainant's notice or lack thereof of his ability to change his account password to avoid use of the last four digits of his Social Security Number as that password.

4. The Commission only has jurisdiction over matters involving complaints as to "service" of a utility, including any "regulation . . . practice or act affecting or relating to the service of the utility." KRS 278.260(1), 278.010(13). As a result of a complaint concerning a utility's service, the Commission may only issue orders concerning the just, reasonable, or

proper rules or practices the utility must observe or employ. KRS 278.280(1). Thus, the Commission is an entity with limited jurisdiction and ability to provide remedies.

5. For purposes of this request only, Cingular admits that the Commission has jurisdiction to determine questions concerning the disruption of service to the Complainant as a result of the inadvertent failure to credit the Complainant's account correctly. The remaining allegations in the Complaint, however, concern breaches of contract, violations of federal statutes, and issues otherwise outside the parameters of a dispute concerning the service provided to the Complainant. See Carr v. Cincinnati Bell, Inc., 651 S.W.2d 126, 128-29 (finding that Commission does not have jurisdiction to determine breach of contract actions).

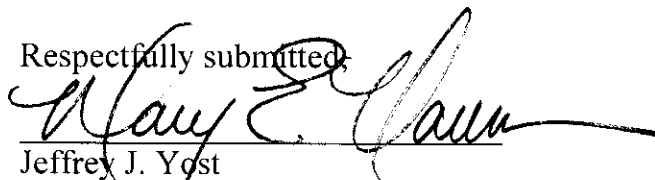
6. Complainant has indicated that he intends to file a civil action against Cingular. This is the Complainant's right. Many of the issues Complainant has raised in this action, including that concerning the use of the last four digits of his Social Security Number, however, are not within the jurisdiction of the Commission and must instead be brought in that proposed civil action. It is beyond the Commission's jurisdiction and indeed would be a waste of the Commission's resources to devote the time and resources necessary for discovery concerning and arguments involving those issues. The facts concerning the service question, however, are not in dispute and are ripe for determination without a formal hearing. Cingular, therefore, requests an informal conference with the Commission Staff in an effort to resolve those questions properly before the Commission concerning the service provided to the Complainant.

7. Furthermore, in order to avoid discovery on issues that must be resolved in civil court and are not properly before the Commission, Cingular requests that the deadlines set

forth in the February 24, 2004 Scheduling Order be suspended pending the holding of the informal conference and the resolution of jurisdictional issues.

WHEREFORE, Cingular respectfully requests (1) that the Commission schedule an informal conference to determine the service issues in this case and (2) that the Commission suspend the deadlines in its February 24, 2004 Scheduling Order until the conclusion of the informal conference and resolution of jurisdictional issues.

Respectfully submitted,



Jeffrey J. Yost  
Mary Elisabeth Naumann  
Jackson Kelly PLLC  
175 East Main Street, Suite 500  
Lexington, Kentucky 40507  
(859) 255-9500  
*Counsel for BellSouth Mobility, LLC d/b/a  
Cingular Wireless*

#### CERTIFICATE OF SERVICE

This is to certify that the foregoing was served by depositing a copy in the United States mail, First Class, postage prepaid and addressed to the following, on this 8<sup>th</sup> day of March, 2004.

Saeid Shafizadeh, Complainant  
Attorney at Law  
P.O. Box 21244  
Louisville, Kentucky 40221



Jackson Kelly PLLC